

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.**

In the Matter of:

**ERWIN ESPE
and
SOUTHERN MORTGAGE and FINANCIAL
SERVICES CORPORATION,**

Respondents.

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DOCKET NO. 07-3428-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notices dated May 03, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondents ERWIN ESPE and SOUTHERN MORTGAGE and FINANCIAL SERVICES CORPORATION (SMFSC) that HUD was proposing their debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a period of three years from the date of the final determination of this action. The Notice advised Respondents that the proposed debarment action was in accordance with the procedures set forth in 24 CFR part 24¹. Further, the Notice informed Respondent Espe that the proposed debarment was based upon his criminal conviction in the United States District Court for the Northern District of Illinois.

Respondent's conviction followed his guilty plea to one count of an Indictment that charged him with wire fraud in violation of 18 USC 1343, 1349, and 2. In pertinent part, the Indictment describes Respondent's participation in a scheme to defraud residential mortgage lenders, and to obtain money by false pretenses. Specifically, as part of the scheme Respondent and his codefendant caused lenders to loan money in excess of the value of the properties securing the loans by making false representations to the lender inflating the value of the properties. The overvalued properties were sold to straw buyers and the proceeds divided

¹ The debarment of SMFSC is based on Respondent Espe's position as its Chief Executive Officer. The notice to SMFSC advised the company that, because Respondent Espe has the power to control it, SMFSC is an "affiliate" of Espe's pursuant to 24 CFR 24.905. Neither Respondent objected to the conclusion in the Notice to SMFSC that it was an "affiliate" of Respondent Espe. Accordingly, all future references to Respondent or Respondent Espe include SMFSC unless the context suggests otherwise or the reference makes plain that it is referring specifically to only one of the Respondents.

between Respondent and his codefendant. Respondent, a licensed appraiser, facilitated the scheme by creating fraudulent appraisals, falsely representing that certain improvements had been made to the properties, to support the inflated sales price of the properties.

For his part in the scheme, Respondent was sentenced to a prison term of ten months and placed on supervised probation for two years and ordered to pay restitution with the determination of the actual amount deferred.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on September 26, 2007, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present at the hearing, appearing pro se. Stanley Field, Esq. appeared on behalf of HUD.

SUMMARY

I have decided, pursuant to 24 CFR part 24, to debar Respondents Espe and SMFSC from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of this Notice. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment dated May 03, 2007.
- (2) The Criminal Complaint filed April 10, 2006, in the United States District Court for the Northern District of Illinois charging Respondent with the commission of certain offenses.
- (3) The Superseding Indictment charging Respondent filed on October 6, 2006, in the United States District Court for the Northern District of Illinois.
- (4) The affidavit sworn to by a Special Agent of the Secret Service on April 10, 2006.
- (5) The Plea Agreement entered into by Respondent with the United States Attorney for the Northern District of Illinois dated October 12, 2006.
- (6) The Judgment in a Criminal Case entered December 13, 2006.
- (7) A letter from Respondent addressed to Arthur M. Orton of the Departmental Enforcement Center (DEC), received in the DEC on April 30, 2007.
- (8) A LexisNexis document, appended to the Government's brief as Exhibit 6, showing Respondent Espe as the Chief Executive Officer of SMSFC.
- (9) The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondent filed September 13, 2007 (including all attachments and exhibits thereto).
- (10) The tape recording of the September 26, 2007, hearing.

HUD's ARGUMENTS

HUD argues that Respondent was a "participant" as defined at 24 CFR 24.980, and that he engaged in a "covered transaction" as that term is defined in 24 CFR 24.200. HUD asserts

that, because Respondent was employed as an FHA-approved appraiser, Respondent “was a participant in HUD nonprocurement covered transactions and is, therefore, subject to the debarment regulations.” HUD further argues that the offense for which Respondent was convicted is a cause for debarment under 24 CFR 24.800(a)(1) and (4). Additionally, Respondent’s commission of a crime that involved fraud and more “indicates a lack of business integrity or business honesty that seriously and directly affects his present responsibility, and is another cause for his debarment.” HUD concludes that Respondent’s fraud was significant, resulting in “substantial losses,” thus a three-year debarment is warranted for both Respondent Espe and SMFSC.

RESPONDENT’S ARGUMENT’S

Respondent Espe at the telephonic hearing did not contest his proposed debarment nor that of his affiliate, SMFSC. Respondent proffered no arguments or facts in mitigation of his criminal actions. Respondent Espe told the hearing that he “will not dispute anything,” that he chose “not to contest the debarment,” that “you may proceed as you please” and that it was “just fine with” him. In Respondent Espe’s letter to Mr. Orton received in the DEC on May 30, 2007, Respondent wrote that he “agree[d] to the sanction but would only request that the debarment be for a period of two years and begin as of April, 2006, when [he] was suspended from HUD transactions.”

FINDINGS OF FACT

1. Respondent was a participant in a covered transaction.
2. Respondent was an FHA-approved licensed appraiser.
3. Respondent participated in a fraudulent scheme to sell properties with a falsely inflated value to straw buyers and shared in the proceeds from the sale of the properties.
4. Respondent provided inflated appraisals on properties that were involved in the fraudulent scheme.
5. Respondent pleaded guilty and was convicted of one count of an Indictment that charged him with committing wire fraud.
6. Respondent Espe was the Chief Executive Officer of his correspondent SMSFC.
7. Respondent agreed with the debarment action, but requested a term of debarment less than that proposed by HUD.
8. Respondent was sentenced to prison for ten months and placed on supervised probation for two years and ordered by the court to pay restitution, the full amount of which is to be determined.
9. Respondent’s criminal conviction provides a basis for his debarment under 24 CFR 24. 800.
10. Respondent has no prior history of wrongdoing with respect to HUD’s programs.
11. Respondent provided no mitigating facts or evidence to be considered in his defense.

CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 24 CFR part 24.
2. Respondent was a principal as defined in 24 CFR 24.995.
3. Southern Mortgage and Financial Services Corporation is an "affiliate" of Respondent Espe pursuant to 24 CFR 24.905.
4. Debarment of Respondent Espe also is effective with respect to SMFSC in accordance with 24CFR 24.625.
5. Respondent's fraudulent acts in providing inflated appraisals resulted in his criminal conviction, which serves as the basis for his debarment.
6. Pursuant to 24 CFR 800, Respondent's conviction is a cause for debarment.
7. Respondent has not yet made restitution ordered by the court.
8. Respondent's involvement in the scheme to obtain money and property by fraudulent means raises grave doubts with respect to his business integrity and personal honesty.
9. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
10. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined to debar Respondent ERWIN ESPE and Respondent SOUTHERN MORTGAGE AND FINANCIAL SERVICES CORPORATION for a period of 3 years from the date of this Notice. In accordance with 24 CFR 24.870(b)(iv), Respondents' "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 11 Oct. 2007



Henry S. Czauski
Debarring Official